Supreme Court, U. S.
FILED
FEB 10 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-993

UNION OIL COMPANY OF CALIFORNIA,

Petitioner,

v.

ASHLAND OIL COMPANY OF CALIFORNIA

and

DEPARTMENT OF ENERGY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE TEMPORARY EMERGENCY COURT OF APPEALS
OF THE UNITED STATES

BRIEF OF RESPONDENT ASHLAND OIL COMPANY OF CALIFORNIA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WILLIAM H. BODE
ALFRED LAWRENCE TOOMBS
BATZELL, NUNN & BODE
1523 L Street, N.W.
Washington, D.C. 20005
(202) 393-8535

Attorneys for Respondent Ashland Oil Company of California

Of Counsel:
ROBERT L. DUNN
BANCROFT, AVERY & McALISTER
240 Stockton Street
San Francisco, Calif. 94108
(415) 982-7526

Washington, D.C. • THIEL PRESS • (202) 638-4521

Page

TABLE OF CONTENTS

TABLE OF AUTHORITIES i
QUESTION PRESENTED FOR REVIEW 1
STATEMENT OF THE CASE 2
REASONS FOR DENYING THE WRIT 5
1. There is No Conflict Between TECA's Opinion and the Decisions of This Court 6
2. TECA's Interpretation of the ESA and the EPAA Was Clearly Correct 9
3. TECA's Determination Was Consistent With the Applicable State Law 12
CONCLUSION 14

TABLE OF AUTHORITIES

Cases:

American Fire & Cas. Co. v. Finn, 341 U.S. 6 (1951) 7
Baltimore S.S. Co. v. Phillips, 274 U.S. 316 (1927) 6, 7
Barr v. WUI/TAS, Inc., 66 F.R.D. 109 (S.D.N.Y. 1975) 11
Beck v. Arthur Murray, Inc., 245 Cal.App.2d 976, 54 Cal. Rptr. 328 (1966) 13
Communist Party v. SAC Board, 367 U.S. 1 (1961) 10
Evans v. Suntreat Growers & Shippers, Inc., 531 F.2d 568 (Em.App. 1976) 10, 11
Evanson v. Union Oil Co., Energy Mngm't. Rep. (CCH) ¶26,056 (D. Minn. 1976) 11
Hurn v. Oursler, 289 U.S. 238 (1933) 9
Longview Refining Co. v. Shore, 554 F.2d 1006 (Em. App.), *cert. denied*, ___U.S.___, 54 L.Ed.2d 98 (1977) 2, 10, 11

Page

Cases (continued):

Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943) 7

Manning v. University of Notre Dame du Lac, 484 F.2d 501 (Em.App. 1973). 10, 11

McAllister v. Magnolia Petroleum Co., 357 U.S. 221 (1958) 8, 9

Mine Workers v. Gibbs, 383 U.S. 715 (1966) 9

NLRB v. Coca-Cola Bottling Co. of Louisville, Inc., 350 U.S. 264 (1956) 10

NLRB v. Denver Building & Construction Trades Council, 341 U.S. 675 (1951) 10

NLRB v. Hearst Publications, Inc., 322 U.S. 111 (1944) 10

Porter v. Arthur Murray, Inc., 249 Cal.App.2d 410, 57 Cal.Rptr. 554 (1967) 13

Stock v. Meek, 35 Cal.2d 809, 221 P.2d 15 (1950) 12, 13

Stone v. James, 142 Cal.App.2d 738, 299 P.2d 305 (1956) 13

Thomas v. Amerada Hess Corp., 393 F.Supp. 58 (M.D.Pa. 1975) 11

United States v. Magnolia Motor & Logging Co., 208 F.Supp. 63 (N.D.Cal. 1962) 14

Statutes and Regulations:

California Code of Civil Procedure, Section 340(1) 3, 13, 14

Economic Stabilization Act of 1970, 84 Stat. 799, as amended, 85 Stat. 743, 12 U.S.C.A. §1904, note 2, 4, 5, 9, 10, 12, 14

Section 210 . . . . . 5, 8, 11

Section 210(b) 2, 11

Section 211(b) 9

Section 211(b)(2) 3

Statutes and Regulations (continued): Page

Emergency Petroleum Allocation Act of 1973, 15 U.S.C. §754(a)(1) 1, 3, 4, 5, 8, 9, 10, 12, 14

Federal Rules of Appellate Procedure 35(b) 12

Federal Rules of Civil Procedure 12(b)(6) 3

Mandatory Petroleum Price Regulations,
10 C.F.R., Part 212 3
10 C.F.R. §212.82 3
10 C.F.R. §212.83(a)(1) 3

Supreme Court Rule 19 5

Temporary Emergency Court of Appeals Rule 30(b) 12

Miscellaneous:

The American Bench (1st Ed. 1977) 12

H.R.Conf.Rep. No. 92-753, 92d Cong., 1st Sess., *reprinted in* [1971] 2 U.S. Code Cong. & Admin. News 2310 10

S.Conf.Rep. No. 92-579, 92d Cong., 1st Sess., 20 (1971) 10

S.Rep. No. 92-507, 92d Cong., 1st Sess., *reprinted in* [1971] 2 U.S. Code Cong. & Admin. News 2292-93 10

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-993

UNION OIL COMPANY OF CALIFORNIA,

Petitioner,

v.

ASHLAND OIL COMPANY OF CALIFORNIA

and

DEPARTMENT OF ENERGY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE TEMPORARY EMERGENCY COURT OF APPEALS
OF THE UNITED STATES

BRIEF OF RESPONDENT ASHLAND OIL COMPANY OF CALIFORNIA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

QUESTION PRESENTED FOR REVIEW

Whether the Temporary Emergency Court of Appeals, to which Congress entrusted exclusive appellate jurisdiction over actions under the Emergency Petroleum Allocation Act of 1973, correctly held that the district court had erred in dismissing, in its entirety, a private action brought thereunder to recover both price

overcharges and treble damages on the ground that each claim was barred by a one-year California statute of limitations governing actions "upon a statute for a penalty or forfeiture."

STATEMENT OF THE CASE

This action was brought in the United States District Court for the Northern District of California by respondent Ashland Oil Company of California ("Ashland"), a non-branded independent marketer and wholesale purchaser-reseller of motor gasoline and other petroleum products, against petitioner Union Oil Company of California ("Union"), a refiner of such products, and the Federal Energy Administration ("FEA"), now a part of respondent Department of Energy ("DOE").[1] The jurisdiction of the district court was based upon Section 210(b) of the Economic Stabilization Act of 1970, 84 Stat. 799, as amended and reenacted by the Economic Stabilization Act Amendments of 1971, 85 Stat. 743, as further amended, set forth as a note following 12 U.S.C.A. §1904 ("the ESA"), as that statute is incorporated by reference into the Emergency Petroleum Allocation Act of 1973 ("EPAA"), 15 U.S.C. §754(a)(1). *See* Petition, pp. 3-4.

The complaint contains separate claims for the recovery of price overcharges and for treble damages, plus attorney's fees on each, resulting from sales of motor gasoline made by Union to Ashland during the period between January 1975 and February 1976 at

[1] FEA was named as a defendant in light of the language contained in *Longview Refining Co. v. Shore*, 554 F.2d 1006, 1023 (Em.App.), *cert. denied*, ____ U.S. ____, 54 L.Ed.2d 98 (1977).

prices in excess of those permitted by FEA's Mandatory Petroleum Price Regulations, 10 C.F.R., Part 212.[2] The gravamen of the complaint is that Ashland belonged to the class of purchaser composed of non-branded independent marketers which are independent wholesale purchaser-resellers, and that Union placed Ashland into a different class of purchaser and thereby charged it prices at least 5.5 cents higher than those charged to other members of the class of purchaser into which Ashland should have been placed. *See* Petition, Appendix D.

This action was commenced on March 23, 1977. Subsequently, Union filed a motion to dismiss the action as to it pursuant to Fed.R.Civ.P. 12(b)(6). Union's motion was based upon the contention that the action was barred *in toto* by the provisions of Section 340(1) of the California Code of Civil Procedure, which prescribes a one-year limitation period for actions "upon a statute for a penalty or forfeiture." *See* Petition, p. 5. The motion came on to be heard before District Judge Charles B. Renfrew on June 23, 1977, at which time the court dismissed the entire action. *See* Petition, Appendix C.

In accordance with the provisions of Section 211(b)(2) of the ESA (*see* Petition, p. 5), as incorporated by reference into the EPAA, 15 U.S.C. §754(a)(1), Ashland took a timely appeal to the Temporary Emergency Court of Appeals of the United States ("TECA"). On

[2] In substance, these regulations prohibit Union from charging to any class of purchaser a price in excess of the weighted average price at which a covered product was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973, plus certain increased costs. *See* 10 C.F.R. §212.82 (definition of "maximum allowable price"); §212.83(a)(1).

December 12, 1977, TECA rendered judgment affirming in part and reversing in part the judgment of the district court and remanding the action to it for further proceedings. *See* Petition, Appendix B. In an opinion written for the court by Judge A. Sherman Christensen, TECA held that (i) the record did not contain facts sufficient to satisfy the federal fraudulent concealment rule so as to toll the statute of limitations; (ii) the claim for actual damages was controlled by the three-year statute; and (iii) the claim for treble damages was governed by the one-year statute. *See* Petition, Appendix A.

The essential basis for TECA's holding is contained in Sections II and III of its opinion. *See* Petition, Appendix A, pp. 7-15. In this passage, the court below first notes that neither the ESA nor the EPAA contains a statute of limitations, and that in such circumstances, federal courts apply the most analogous state statute of limitations. *See* Petition, Appendix A, p. 7. However, in determining what state statute will be applied to a federally created right, courts must be guided by the public policy expressed by Congress. *See* Petition, Appendix A, pp. 7-8. While it found nothing in the statutory structure to indicate that the application of any fixed period of limitations was inconsistent with the national policy expressed in the ESA, the court below found the policy expressed in that statute and its legislative history instructive, and concluded that this policy could best be harmonized with the California statutes of limitations by application of the one-year statute to the treble damage claim and the three-year statute to the actual damages claim. *See* Petition, Appendix A, pp. 8-10.

This result was based upon TECA's conclusion that an award for treble damages pursuant to Section 210 of the ESA would be in the "nature of a penalty" and governed by the California one-year statute of limitations. *See* Petition, Appendix A, pp. 11-12. However, TECA further concluded that application of the one-year statute to an action for actual damages would be inconsistent with the express terms and the underlying policy of the ESA, and therefore recognized the "logical, indeed express, applicability of California's three-year statute of limitations" to the claim for overcharges. *See* Petition, Appendix A, p. 12. The court then analyzed the relevant California authorities and concluded that the result that it reached was not inconsistent with the law of that state. *See* Petition, Appendix A, pp. 12-14.

REASONS FOR DENYING THE WRIT

There are no special or important reasons for the discretionary exercise of this Court's power of review. Congress has invested TECA with exclusive jurisdiction to review judgments of the district courts under the ESA and the EPAA. The decision of the court which is charged with primary responsibility for the interpretation of those statutes is entitled to great weight. No showing is made in the petition that any of the reasons described in this Court's Rule 19 are met so as to warrant review of that decision by this Court. Moreover, the well-reasoned opinion of TECA was clearly correct.

1. There Is No Conflict Between TECA's Opinion And The Decisions Of This Court.

Union opens the argument in its petition with the assertion that the opinion of TECA "is in conflict with settled applicable decisions of this Court." *See* Petition, p. 7. With grim foreboding, Union next asserts that this case is "one of a series" where lower courts "have disregarded" a "settled rule." *Id.* Union submits to this Court that TECA "has legislated" by making a "value judgment" as to "[w]hat is a reasonable period of limitations." *See* Petition, pp. 7, 11. Finally, in a contention which is as audacious as it is frivolous, Union argues that the "harsh impact" of FEA's regulations "should not be augmented by the personal view of judges fortuitously empaneled to hear a particular cause of what period of limitations is desirable." *See* Petition, p. 17.

There is simply no "settled rule" found in the decisions of this Court which is violated by TECA's disposition of this case. None of the cases relied upon so stridently by Union involves or relates in any way to the question faced by the courts below: whether in an action to enforce a *federally* created right under a *federal* statute which contains no limitations period, *federal* courts should apply a one-year *state* statute applicable to actions for statutory penalties or forfeitures to a claim for recovery of compensatory damages because of the mere possibility that the plaintiff might recover exemplary damages.

For example, Union's principal authority, *Baltimore S.S. Co. v. Phillips*, 274 U.S. 316 (1927), held that a decree in admiralty denying a seaman damages for negligence and unseaworthiness was *res judicata* to a subsequent action at law for negligence. The basis for

this holding was that the seaman was required to set forth in his first action "every ground of negligence" which was the basis for his claim. *Id.* at 321. Likewise, in *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943), the Court held that an award of compensation under a Texas workmen's compensation statute was entitled to full faith and credit in a subsequent action brought in a Louisiana court under that state's workmen's compensation statute. Again, the Court held that where the "grounds for recovery" are the same injury, no "different cause of action" was created by the two state statutes. *Id.* at 443-44. Similarly, in *American Fire & Cas. Co. v. Finn*, 341 U.S. 6 (1951), the Court held that claims against two foreign insurance companies brought in a state court to recover for a fire loss were not "separate and independent" from a similar claim brought in the same action against a resident insurance agent so as to create diversity of citizenship and permit removal to a federal court pursuant to 28 U.S.C. §1441(c).

None of these three cases establishes any "basic and pervasive principle" (*see* Petition, p. 12) which is violated by the holding of TECA in this action. Each of them involved questions which are quite different from those faced by the courts below: *Phillips* and *Hunt* both involved vindication of the principles of *res judicata* and full faith and credit, which are based in part upon the underlying public policy of preventing "forum shopping." *Finn* involved an application of the congressionally expressed policy of limiting removal jurisdiction in diversity cases. Obviously, the policies exemplified by these three cases have no bearing on the issues which were presented to TECA.

McAllister v. Magnolia Petroleum Co., 357 U.S. 221 (1958), also strongly relied upon by Union, in fact supports the decision of the court below. There, the issue was whether a state court could apply its two-year statute of limitations to bar an action for unseaworthiness which was joined with an action for negligence under the Jones Act, as to which a three-year federal statute was applicable. This Court held that where an action for unseaworthiness is combined with an action under the Jones Act, neither a state nor a federal court, whether at law or in admiralty, can apply to the former a shorter period of limitations than Congress prescribed for the latter. *Id.* at 224. The Court's opinion, delivered by Mr. Chief Justice Warren, held that "[t]he appropriate period of limitations for this action must be determined with an eye to the practicalities of admiralty personal injury litigation." *Id.* In view of the "practical necessity of combining both claims in a single action" under compulsion of the *Phillips* decision, the limitation on the unseaworthiness action "effectively diminishes" the time within which the Jones Act suit must be commenced. *Id.* at 226. Because such a result would be contrary to the policy of "affording seamen 'the full benefit of federal law,'" the Court rejected it. Thus, this Court declined to apply a restrictive state limitations statute because of the overriding national policy expressed in the federal statute.

Similar reasoning was made in this case by TECA, although it did not go as far as this Court did in *McAllister*. TECA determined the question before it with "an eye to the practicalities" of litigation under the Emergency Petroleum Allocation Act. It noted that the national policy expressed in Section 210 of the ESA and its legislative history "tends to repel the extreme

view taken by each of the parties—Ashland's, that California's three-year limitations period and Union's, that its [California's] one-year period should be applied indiscriminately to both claims of the complaint." *See* Petition, Appendix A, p. 9. Accordingly, TECA rejected both of these alternatives in order "that the national policy can best be harmonized with the state statute of limitations." *Id.* Any other result would have been contrary to the principles embodied in this Court's holding in *McAllister*, for it would have applied a state statute of limitations for actions penal in nature to Ashland's federally created claim for actual damages merely because of the discretionary power of the district court to award exemplary damages. Surely, such a result would, as in *McAllister*, fall short of affording plaintiffs under the EPAA and ESA the full benefit of federal law which Congress intended for them to have.

In short, Union's contention that the decision below violates some "basic and pervasive principle" is empty rhetoric. There is no "settled rule" found in the decisions of this Court[3] which would have guided the hand of TECA, or which is contravened by its decision. There is therefore no reason to grant the writ.

2. TECA's Interpretation Of The ESA And The EPPA Was Clearly Correct.

Congress created the Temporary Emergency Court of Appeals in Section 211(b) of the Economic Stabilization Act Amendments of 1971, 85 Stat. 749. The

---

[3]Union also cites this Court's decisions in *Mine Workers v. Gibbs*, 383 U.S. 715 (1966) and *Hurn v. Oursler*, 289 U.S. 238 (1933). As Union acknowledges, both of these cases dealt with the issue of pendent jurisdiction. For this reason, they have no applicability to the issues presented by this case.

conference committee which resolved the two differing bills which became that statute adopted the Senate provisions relating to the judicial procedures applicable to its administration. S.Conf. Rep. No. 92-579, 92d Cong., 1st Sess. 20 (1971); H.R.Conf. Rep. No. 92-753, 92d Cong., 1st Sess., *reprinted in* [1971] 2 U.S. Code Cong. & Admin. News 2310. The Senate draftsmen stated that the purpose of creating TECA was "to funnel into one court all the appeals" arising under the ESA, thus "insuring prompt and consistent adjudication" of all such cases. S.Rep. No. 92-507, 92d Cong., 1st Sess., *reprinted in* [1971] 2 U.S. Code Cong. & Admin. News 2292-93.

In view of this legislatively expressed purpose in creating TECA, its decisions construing the statutes which it is given the primary responsibility to interpret are entitled to great weight, akin to the deference shown to the expertise of administrative agencies in construing the statutes which govern their actions. *See, e.g., Communist Party v. SAC Board*, 367 U.S. 1, 41 (1961); *NLRB v. Coca-Cola Bottling Co. of Louisville, Inc.*, 350 U.S. 264, 269 (1956); *NLRB v. Denver Building & Construction Trades Council*, 341 U.S. 675, 692 (1951); *NLRB v. Hearst Publications, Inc.*, 322 U.S. 111, 131 (1944).

The construction of the EPAA and the ESA made by TECA in this case was foreshadowed by three of its previous decisions interpreting those statutes. In *Longview Refinery Co. v. Shore*, 554 F.2d 1006 (Em.App.), *cert. denied*, ____ U.S. ____, 54 L.Ed.2d 98 (1977); *Evans v. Suntreat Growers & Shippers, Inc.*, 531 F.2d 568 (Em.App. 1976); and *Manning v. University of Notre Dame du Lac*, 484 F.2d 501 (Em.App. 1973), TECA clearly distinguished between the two distinct types of claims authorized by the ESA. In its decision

in the present case, TECA noted that those cases had interpreted Section 210 of the ESA to draw "a clear distinction" between actions for compensatory damages and treble damages. *See* Petition, Appendix A, pp. 10-11. This result was wholly consistent with those decisions as well as with those of several district courts which have construed this statute.

In *Longview*, the plaintiff had failed to file the "bona fide claim for refund," required by Section 210(b) of the ESA where overcharges are "not willful." The court held that there are two types of Section 210 actions with two different procedural requirements: those which allege willful violations and those which allege non-willful violations. As to the former class, a claim for a refund need not be filed; as to the latter, such a claim is a jurisdictional prerequisite. In *Evans*, the court observed that an action for treble damages had been brought in an apparent attempt to avoid the plaintiffs' failure to present a claim for a refund. Because there was neither willfulness nor a claim for a refund, neither right of action could be maintained. Likewise, in *Manning*, the court held that the plaintiff could survive a Rule 12(b)(6) motion only if he could allege that the overcharge was willful, or in the alternative, that he had made a claim for a refund. The plaintiff's failure to do so prevented prosecution of either right of action. At least three district courts have also recognized this distinction. *See Evanson v. Union Oil Co.*, Energy Mngmt. Rep. (CCH) ¶26,056, at p. 26,452 (D.Minn. 1976); *Barr v. WUI/TAS, Inc.*, 66 F.R.D. 109, 114 (S.D. N.Y. 1975); *Thomas v. Amerada Hess Corp.*, 393 F. Supp. 58, 78 (M.D. Pa. 1975).

Since the construction made of the relevant statutes by the court which is specially created to interpret

them was consistent with its own prior decisions, as well as with those of several district courts, its determination was clearly correct. Again, there is no reason to grant the writ.[4]

3. TECA's Determination Was Consistent With The Applicable State Law.

In reaching the conclusion that it did, TECA expressly attempted to harmonize the national policy expressed by the ESA and the EPAA with the limitations law of the forum state. It found ample precedent for the result which it reached in the decisions of the California courts.[5]

In construing their statutes of limitations, the California courts have consistently permitted actions for compensatory damages even in circumstances where claims for multiple damages have been held to be time barred. This result is evidenced by *Stock v. Meek*, 35

---

[4]Union contends that because "no conflict between circuits is possible," *certiorari* is "peculiarly call[ed] for." *See* Petition, p. 7. To the contrary, the very fact that TECA was created in order to achieve consistency of decision renders review by this Court all the more unnecessary and superfluous. It is noteworthy that Union filed no petition below for rehearing or suggesting *en banc* proceedings, pursuant to TECA Rule 30(b) and Fed.R.A.P. 35(b).

[5]Union's assertion that the district judge, who reached a contrary result, was "learned in California law," while the judges of TECA were "fortuitously empaneled," *see* Petition, pp. 8 and 17, should be rejected out of hand. The panel of TECA which unanimously decided this case was presided over by the Honorable James M. Carter, a senior judge of the Ninth Circuit and a former district judge for the Southern District of California. Judge Carter was admitted to practice in California in 1928, served for three years as United States Attorney for the Southern District of California, and was appointed to the federal bench in 1949. *See, The American Bench* 14 (1st Ed. 1977).

Cal.2d 809, 221 P.2d 15 (1950), where the defendant was allowed to recover usurious interest paid even though his counterclaim for treble damages under the state usury law was barred. The court there emphasized the separate nature of the two rights of action. 35 Cal.2d at 816-17, 221 P.2d at 20. Similarly, in *Porter v. Arthur Murray, Inc.*, 249 Cal.App.2d 410, 57 Cal.Rptr. 554 (1967), the court allowed recovery of money had and received in violation of the California Dance Act, Cal.Civ. Code §1812.50 *et seq.*, even though the plaintiff had dismissed his claim for treble damages under that statute in the view that it was barred by the one-year statute of limitations. 249 Cal.App.2d at 418, 57 Cal.Rptr. at 560.

Again, in *Stone v. James*, 142 Cal.App.2d 738, 299 P.2d 305 (1956), the plaintiff sought to recover all installment payments made under a conditional sales contract on the ground that he had paid the balance in full prior to maturity but that the defendant had failed to refund a portion of the unearned finance charges as prescribed by statute. The court affirmed the dismissal of the action under the one-year statute of limitations, Cal.Civ.Pro. Code §340(1). The court went on to hold that the plaintiff was apparently correct in contending that the provisions of the statute were severable, and that "there would still exist a right of action . . . to recover the finance charges which were prepaid and not returned. . . ." 142 Cal.App.2d at 739-40, 299 P.2d at 307.

Analogously, in *Beck v. Arthur Murray, Inc.*, 245 Cal.App.2d 976, 54 Cal.Rptr. 328 (1966), the court held that a statutory penalty was not imputable to a licensor under the doctrine of *respondeat superior*, but that it was subject to an action for actual damages. 245

Cal.App.2d at 982, 54 Cal.Rptr. at 332. Finally, in *United States v. Magnolia Motor & Logging Co.*, 208 F. Supp. 63 (N.D. Cal. 1962), a federal court held that the one-year statute of limitations contained in Cal.Civ.Pro. Code §340(1) was applicable to an action brought by the United States to recover treble damages for willful injury to trees under Cal.Civ. Code §3346. However, the court also held that the government's claim for actual damages was a common law cause of action, against which a state statute of limitations could not run.

In its opinion, TECA analyzed and relied upon all of these California cases. Since they clearly support the decision below, it is a correct interpretation of state law as it interfaces with federal law in this action. Once more, there is no reason to grant the writ.

CONCLUSION

The Temporary Emergency Court of Appeals correctly held that the district court had erred in dismissing respondent's claim for the recovery of actual damages under the Economic Stabilization Act Amendments of 1971, as incorporated into the Emergency Petroleum Allocation Act of 1973, on the ground that it was barred by a one-year state statute of limitations relating to "action[s] upon a statute for a penalty or forfeiture." TECA's conclusion that respondent's claim for compensatory damages was governed instead by the three-year statute for "action[s] upon a liability created by statute, other than a penalty or forfeiture" was consistent with its own prior interpretations of these federal statutes as well as with the applicable decisions of the California courts. Nor did

this disposition violate any clearly developed or long standing line of this Court's decisions. In view of the foregoing, there are no special or important reasons requiring the discretionary exercise of this Court's review power. Accordingly, the petition for a writ of *certiorari* should be denied.

Dated: February 10, 1978

Respectfully submitted,

WILLIAM H. BODE
ALFRED LAWRENCE TOOMBS
BATZELL, NUNN & BODE
1523 L Street, N.W.
Washington, D.C. 20005
(202) 393-8535

Attorneys for Respondent
Ashland Oil Company
of California.

Of Counsel:
ROBERT L. DUNN
BANCROFT, AVERY &
McALISTER
240 Stockton Street
San Francisco, California 94108
(415) 982-7526